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CURRENT TOPICS

Land Charges: The Roxburgh Committee's Report

THE principal question posed to the Committee on Land Charges appointed in October, 1954, under the chairmanship of ROXBURGH, J., was to consider the position arising on and after 1st January, 1956, whereby a purchaser under an open contract may be deemed under s. 198 of the Law of Property Act, 1925, to have actual notice of a charge registered against a previous owner whose name he has no means of finding out. This problem the Committee, in their report published last week (Cmd. 9825, 1s.), find insoluble: re-registration of charges against land instead of against estate owners is held impracticable, and other suggestions merely transfer injustice from purchaser to chargee. In the result, the Committee recommend the extension of compulsory registration of title to cover all England and Wales as soon as possible, purchasers meanwhile accepting the existing state of affairs with as much resignation as they can muster.

Purchase "Free from Incumbrances": Notice Imputed to Purchaser at Time of Contract

THE Committee then went on to consider Eve, J.'s judgment in *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379, in which a purchaser under a contract for sale "free from incumbrances" was deemed, by virtue of s. 198, to have actual notice at the date of the contract of an irremovable incumbrance, and was not, therefore, entitled to refuse to complete. Searches before contract have become the practice as a result, but apart from special conditions in the contract the purchaser is inadequately protected as respects land charges in the central register because the search is often incomplete. In any case a purchaser may contract without legal advice. This position the Committee regard as indefensible, and they recommend that s. 198 should be amended to ensure that registration shall not as between vendor and purchaser be deemed to give the purchaser knowledge at the date of the contract of any matters of which he was in fact ignorant. Contracting out of this provision should, however, be allowed in the case of local land charges only. The Committee also considered the law affecting the liability of lessees and assignees of leases in respect of land charges registered against their landlords (i.e., the apparent conflict between s. 44 (5) of the Law of Property Act on the one hand and s. 198 of that Act and s. 50 (2) of the Land Registration Act, 1925, on the other) but their conclusions on this, together with a number of other interesting suggestions made *obiter* in the report, must await fuller discussion in a later issue.

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Fall in Litigation Figures

"ALL the figures point one way" was the conclusion reached by the legal correspondent of *The Times*, writing in the issue of 24th July on an expected reduction by half of the work in the Queen's Bench Division by the end of 1957. The fall dates back to October, 1954, when the weekly average of cases set down for trial fell abruptly from over sixty to about thirty-five, and was thereafter maintained at an average of forty a week. Figures of writs issued show that litigation began to fall off at its source at about the end of 1952. The time taken between setting down and trial had been reduced from ten months in the autumn of 1954 to three or four months. In connection with the increase of the jurisdiction of the county courts under the County Courts Act, 1955, the writer said that 23 per cent. fewer writs were issued in the Queen's Bench Division in the first six months of this year than in the same period last year. He also drew attention to the trend to try cases in the provinces, and to the fall in the volume of work in the Chancery Division. The conclusion that litigation has diminished and is still diminishing is, of course, depressing for those who make their living by it. On the other hand, any decrease in what is by no means always necessary expenditure is not a bad thing socially. Human nature being what it is, however, we doubt whether litigation will ever decrease to vanishing point.

Civil Liberties

THE *Civil Liberties Docket*, published by the National Lawyers Guild of New York, is eloquent of the vigilance of lawyers in protecting rights of free speech, free religion, free association and other rights which we too often take for granted. Of special interest to lawyers are reports of action against and disbarment of attorneys on account of political associations, or refusal to answer questions as to such associations and as to newspaper subscriptions. In one case, a refusal to admit a candidate as an attorney on the ground of his association with an attorney "generally considered" to be a communist party member was reversed. If we can feel sorry for our American colleagues in the dangers that encompass them, we may also have a certain sense of inferiority by reason of the absence in this country of a law protecting privacy such as exists in some States of the U.S.A. In one case—reprinted in the July issue—a creditor telephoned a debtor six times a day at home and at his place of employment, sometimes late at night, for a period of three weeks, and also advised the debtor's employer of the debt, with the result that the employer threatened to discharge the debtor. The court (Ohio State Court) recognised the right to privacy and approved the award of punitive damages where malice was shown. In Wisconsin, however, it appears that several Bills to enact a right of privacy have been defeated, and the courts have refused to hold that it exists.

The Housing Subsidies Act, 1956

A CIRCULAR which is in effect a small textbook on the Housing Subsidies Act, 1956, has been sent by the Ministry of Housing and Local Government to housing authorities and county councils in England and Wales (Circular No. 33/56, 17th July, 1956; H.M. Stationery Office, 1s. 3d.). It specifies three main purposes of the Act: (1) to place housing finance on a more equitable and realistic basis; (2) to facilitate and encourage the replacement of the slums; and (3) to assist and foster town development and so alleviate conditions in the congested cities. The circular indicates the lines of policy for local authorities to follow in carrying out the provisions of the Act. Local authorities are expected to use the subsidies they receive as a pool applicable to all their houses, and may think it desirable in doing so to introduce differential rent schemes. Councils are asked to make a return not later than 31st August, 1956, showing the number of houses for which they have sought or intend to seek tenders during the twelve months ending 31st March, 1957, distinguishing the purposes for which the council intends to use the houses. The circular also contains an appendix annotating sections of the Act, and memoranda on the administration of the special provisions relating to payment of subsidy in connection with slum clearance, overspill, town development, payment and recovery of additional contributions to new towns and towards town development shares and miscellaneous provisions, as well as a full statement of the conditions of grant approved by the Treasury. The Act came into operation on 28th March, 1956.

Change of Name

CONCERNED with words and their meaning as we lawyers so often are, we become more concerned when we find Parliament seeking, as it does in the Sanitary Inspectors (Change of Designation) Bill, to alter the meaning of words. Those who thought that Parliament had gone far enough, in decreeing in the Interpretation Act, 1889, that plain words should be construed according to their plain meaning, will now lose some of their faith in their ability to distinguish between the present and the past plain meanings. Sanitary officers, when this Bill is passed, will be known as public health officers. (The Bill is likely to have become law by the time these words appear.) LORD GRESFORD, in the debate on the second reading in the Lords on 26th July, said that to the credit of sanitary inspectors the title being thrust upon them was not that for which they had asked. He thought that ratcatchers had earned public ridicule in inducing local authorities to call them rodent operatives. It is an awe-inspiring thought that in our modern society sanitary inspectors have sufficient power to move Parliament to legislate with regard to their designation, because of some vague association of the word "sanitary" with the more distasteful aspects of public health. Solicitors have more solid ground for complaint because of the much more definitely unpleasant associations of the verb "to solicit," as well as because the noun in the U.S.A. means "commercial traveller." Yet for all their strong representation in Parliament, have they the same power as sanitary inspectors to secure a change of name?

Control of Borrowing: A Gap Closed

AN amendment to the Control of Borrowing Order, coming into force on 2nd August, was announced by the CHANCELLOR OF THE EXCHEQUER this week. As we go to press the order is not yet available, but its purpose is to make Treasury consent necessary where securities are issued in exchange for the transfer of property (except on conversion of a partnership into a public company or on merger of two companies). This will have the effect of preventing a company from transferring assets to a subsidiary in exchange for securities which it subsequently sells for cash, a method which has increasingly been employed of raising funds without Treasury consent.

DISMISSAL AND NON-CONTRIBUTORY PENSION SCHEMES

THE report of *Beach* v. *Reed Corrugated Cases, Ltd.* [1956] 1 W.L.R. 807; *ante*, p. 472, contains a passage (at p. 816) which stimulates thought on one aspect of the modern widespread development of pension schemes throughout industry and commerce.

In *Beach's* case, the plaintiff, who was claiming damages for wrongful dismissal, had, *inter alia*, claimed damages for alleged loss of benefits under a retirement scheme for directors. The scheme was non-contributory, that is, the defendants paid the contributions to insurers for the benefits provided. Provision was made, in the event of the employment being terminated, for the employee to receive certain benefits and options. The plaintiff had received these benefits in accordance with the rules of the scheme, and it was not disputed that, under the rules, his rights under the scheme were exhausted, and that he had no further claim against the defendants under the scheme itself, but it was contended that, by their wrongful determination of his contract of service, the defendants had in fact deprived the plaintiff of the opportunity of eventually receiving a much larger sum.

Pilcher, J., disallowed the claim for damages under this head, holding that the defendants had a perfect right under the scheme and trust deed to discontinue the scheme, in whole or with regard to any one individual, at any time. They had discontinued the plaintiff's assurance and paid him out under the rules of the scheme, and his rights under the scheme as such had been exhausted. Although participation in the scheme was an attractive term of the plaintiff's service agreement, the defendants could not be held liable for damages in contract for failing to do what they were not in fact obliged to do under the contract.

Individual pension schemes vary infinitely and in this article the discussion will be confined to a non-contributory scheme (in the sense that the employee pays nothing), membership of which is compulsory as a condition of service. These schemes may, again, be sub-divided into two main classes, those where on termination of the employment, for reasons other than misconduct, some payment is made, or benefit accrues, to the employee, and those where he receives nothing. Although Mr. Beach was fortunate in that on termination of his employment he received a substantial sum, it is a fact that in many such schemes nothing is paid to the employee.

It seems that one day the case is bound to arise where an employee, having served his master for a fair period under a scheme which makes no specific provision in the matter of early termination of the employment, and having reached a time in life where he might look forward to the receipt of a pension within the foreseeable future, is dismissed for some reason or other, not amounting to misconduct on his part. Will he be entirely without remedy? On the present state of the authorities it is thought that he would be, but in recent years there have been some "straws in the wind" which may possibly indicate that in an appropriate case the court might so construe his contract of service as to give him a remedy in damages.

No implied contract not to give employee notice

The point is not novel. In *Ward* v. *Barclay Perkins & Co., Ltd.* [1939] 1 All E.R. 287 the plaintiff had been employed by the defendants for some six or seven years. The defendants had a staff endowment and pension scheme to which the plaintiff had contributed for several years on the footing that he was on the permanent staff. The defendants decided that there was no scope for advancement of the plaintiff, and for this reason gave him three months' notice. No reflection was made on the plaintiff's character or ability. The plaintiff contended that there was an implied contract that if he came into the pension scheme he became a member of the permanent staff, and that thereupon he became entitled to permanent employment, subject to such considerations as good conduct, health and the continuance of the employer's business. He contended that he could not be given ordinary notice until he attained the age of 65 and obtained the full benefit of his contributions. Oliver, J., held that such a stipulation could not be implied into a contract unless on the evidence it was shown to have been mutually intended, and necessary to give business efficacy to the document. This could not be said in the present case.

The idea that the court would compel a master to retain the services of an unwanted servant for a lengthy period is contrary both to principle and to common sense. It may also be impracticable to retain the servant owing to the exigencies of the master's business. On the other hand, if the servant can show that part of the consideration for his services was an agreement between his master and himself for payment of a pension after continued service to a given age, there seems no reason in principle why he should not obtain damages to compensate him for loss of pension rights if the master prematurely terminates the contract of service.

The difficulty will lie in establishing the contractual obligation on the part of the master, especially where, as in so many of these schemes, pensions are to be payable "at discretion."

Consideration and non-contributory schemes

The question of consideration arises directly in the case of a contributory scheme. It may, however, also arise in the case of a non-contributory scheme. A good illustration is afforded by *Bowskill* v. *Dawson* (*No.* 2) [1955] 1 Q.B. 13, where the employers had financed the scheme and provided the amounts necessary to pay the premiums in respect of a death grant. A situation that frequently arises in practice is dealt with at the conclusion of the judgment of Romer, L.J. (at p. 28), where his lordship noted that, although non-contributory, the booklet describing the scheme had contained the definite promise that a proportion of the company's income would be allocated for the benefit of employees, either directly as wages, or indirectly as social benefits, in return for their services to the company. From this promise his lordship inferred that a portion of the company's income was devoted to the scheme which might otherwise have been applied in paying higher wages. Hence the element of consideration was present.

Re J. Bibby & Sons, Ltd., Trust Deed [1952] 2 T.L.R. 297 is another case where there are *dicta* both on the subject of discretion and on consideration. It was an estate duty case where a non-contributory pension scheme provided for the award of a pension to a widow on the death of an employee, subject to the absolute discretion of the trustees of the scheme. On the death of an employee the trustees awarded his widow a pension, and the Crown claimed estate duty in respect of

the annuity. Harman, J., held that duty was not payable as the trustees had an absolute duty to give or withhold a pension in any case as they thought fit, so that no beneficial interest was created or arose on the death of the deceased, and the pension was not purchased or provided in any way by the deceased, but by the company. On this last point, Harman, J., said (at p. 301): "Certainly it is not purchased, because he did nothing to purchase it: he made no bargain; he did not come into the company's employment under the promise, express or implied, of a pension; he had, as I say, satisfied all the conditions of the pension deed before the deed was ever in existence; and there is no evidence that he ever changed his position thereafter or stayed longer or did more work or got less pay because of the existence of the deed."

The difficulties that will arise from a discretion clause are very much greater than those arising from the question of consideration, for membership of a scheme can be just as much a reward for services as payment of wages in cash. Many employers when engaging staff hold out their pension schemes as an inducement, without, perhaps, expounding the discretionary provisions (if any) quite so fully.

Perhaps the solution will be that the court, whilst acknowledging the sanctity of contract, will endeavour to impose the burden of proof on the master to establish that the servant entered his employment with clear knowledge of all the terms of the pension scheme, especially any which relate to the termination or curtailment of benefits.

H. N. B.

INSURANCE OF GOODS HELD "IN TRUST"

THE recent case of *John Rigby (Haulage), Ltd.* v. *Reliance Marine Insurance Co., Ltd.* [1956] 3 W.L.R. 407; *ante*, p. 528, is an interesting addition to the line of decisions which have interpreted the terms "in trust or on commission" or their variants which are found in insurance policies relating to goods in transit or in store.

One of the earliest cases is *Waters* v. *Monarch Fire & Life Assurance Co.* (1856), 5 E. & B. 870, where warehousemen insured goods in their possession belonging to third persons. The policy contained a clause that it applied to all goods held by the insured "in trust or on commission." The goods were destroyed by fire and, although the warehousemen were not liable to make good the loss to the owners since there had been no negligence on their part, the Court of Queen's Bench held that they were entitled to recover under the policy. Campbell, C.J., observed (at p. 880): "What is meant in those policies by the words 'goods in trust'? I think that means goods with which the assured were entrusted; not goods held in trust in the strict technical sense, so held that there was only an equitable obligation on the assured enforceable by a subpœna in Chancery, but goods with which they were entrusted in the ordinary sense of the word. They were so entrusted with the goods deposited on their wharfs; I cannot doubt the policy was intended to protect such goods; and it would be very inconvenient if wharfingers could not protect such goods by a floating policy." A similar decision was reached by the same court in *L.N.W.R. Co.* v. *Glyn* (1859), 1 E. & E. 652, which concerned the liability of carriers for goods stored in a warehouse where the owners could not claim compensation because they had not stated their true value as required by the Carriers Act, 1830, s. 1.

Words of limitation

In the last-mentioned case Erle, C.J., and Hill, J., had thrown out the suggestion that if insurance companies wished in future to limit their liability only for goods for which the insured was "responsible," they must employ express words to that effect. Advantage was taken of this idea in *North British & Mercantile Insurance Co.* v. *Moffatt* (1871), L.R. 7 C.P. 25, where the insurance was expressed to be in respect of "merchandise . . . in trust or on commission for which (the insured) are responsible." In this case the insured had purchased a cargo of tea from a firm of importers and had then resold it to third parties, although pending delivery it remained in a warehouse. A fire took place and the tea was lost. The Court of Common Pleas held that the property in the goods had passed to the third parties and was at their risk. The insured owed no responsibility to them, and therefore were unable to claim under the policy. It was not sufficient for them to show that they still held the warrants issued by the wharfinger, for these were merely for the convenience of paying the charges necessary to clear the goods.

This case was followed in *Engel* v. *Lancashire & General Assurance Co., Ltd.* (1925), 30 Com. Cas. 202. Here a furrier had taken out a burglary insurance policy which covered goods belonging to himself and those which were held "in trust or on commission for which the assured is responsible." During the currency of the policy some goods had been entrusted to him to work upon in his business, and these were stolen. There was no negligence on his part, so that he was not legally liable to their owner. In an action on the policy he claimed that the word "responsible" extended the words "in trust" and referred to the general responsibility of a bailee for goods and was not limited by his liability in case of loss. The insurance company, however, maintained that the word "responsible" meant "liable in case the goods are lost by the peril or perils covered by the policy," and Roche, J., upheld this contention. The learned judge expressed the view that he was bound by the *North British* case, *supra*, and said that it was to his mind abundantly clear that there the court regarded those words and decided that they were words of limitation cutting down and not either defining or extending the liability of the assured which would be otherwise contained in the words "in trust."

Sometimes the wording in the policy is a combination of the two types of clauses set out above. In *Lake* v. *Simmons* [1926] 1 K.B. 366 a jeweller had taken out a policy against theft in respect of goods "in trust or on commission or for which the assured is held responsible." The insured had obtained valuable necklets from a London firm on approval so that he could show them to a prospective customer. One of the issues in the case was whether the goods came within the terms of the policy. McCardie, J., reviewed the earlier decisions and stated that the word "or" was disjunctive and was important. He considered that there was no doubt that the jeweller held them "in trust," and further the wording of the approval notes threw upon him the responsibility of actually returning the goods or becoming liable for the price.

Insured must have possession

To constitute a loss within the types of policy considered above it must, of course, be proved that goods have actually come into the possession of the insured. This point has been illustrated in *John Rigby (Haulage), Ltd.* v. *Reliance Marine Insurance Co., Ltd., supra.* Here a policy had been taken out by a firm of road transport contractors and it covered the legal liability of the assured "for the loss of or damage to (goods) held by the assured in trust for which the assured are themselves responsible whilst in transit." A lorry driver, falsely representing that he was employed by a firm of sub-contractors to whom the insured usually sub-contracted their work, obtained from the insured's transport manager a "collection order" entitling him to collect some copper ingot bars from a warehouse. The owners handed them over and the goods were never seen again. They then maintained that they held the insured responsible because they had held out the driver as their servant. The insured thereupon claimed under the policy, but Barry, J., gave judgment for the insurance company. He considered that in the absence of estoppel the insured were complete strangers to the transaction and could be under no conceivable liability to the owners. If no collection note had been given to the driver and he had obtained the goods solely as a result of his own representation that he was a servant of the sub-contractors, that would have been a simple case of larceny by a trick and no claim against the insured could have possibly been sustained. The goods had been stolen from the owners and never came into the possession of the insured at all, so that they could not be held to be "in trust." The insurance company could not be affected by any estoppel which might arise between the insured and their customers. Any other construction would involve the substitution of the words "held in trust or deemed to be held in trust" for the existing language of the policy.

This decision, however, was reversed by the Court of Appeal. Jenkins, L.J., considered that it seemed impossible to hold that the term "entrusting" was limited to cases in which the insured came into actual physical possession of the goods. In the ordinary case where a genuine sub-contractor was employed, the transaction was carried out in the same way as the transaction now in question. The owners entrusted the goods to the insured and not the sub-contractor, albeit that physical possession was given to the sub-contractor direct at the request of the insured instead of being given in the first instance to the insured and by them to the sub-contractor. Hodson, L.J., said that it was clear that the goods must be held in some way under the direction of the insured. He took the view that the insured were in a position to exercise control although the thief had a collection order and collected the goods. At any time, if they found out that he was the thief, they could have intervened, turned him from the driving seat and put another driver in.

E. R. H.-I.

A Conveyancer's Diary

A STAMP DUTY POINT

A VERY knotty problem was put to me the other day, one which it was said had divided a firm from top to bottom. A purchaser takes a conveyance of property and one of the terms of the contract is that he should bear the whole of the vendor's costs. Are those costs part of the consideration for purposes of stamp duty?

There is no authority precisely in point, and the practice of the Stamp Duty Office follows an opinion which the Controller has given. The opinion, which is dated the 24th November, 1949, is set out in the *Law Society's Digest* (p. 61, No. 208), and is as follows: "Where the obligation to pay the vendor's costs and expenses is imposed upon the purchaser, the amount of such costs and expenses is not to be regarded as part of the consideration where the obligation is imposed (*a*) by some general statute, or (*b*) by the established practice of some public body sanctioning the sale (e.g., the Charity Commissioners), or (*c*) in accordance with a well-known local practice. In other cases, such costs and expenses, if borne by the purchaser, are held to form part of the consideration and are to be included in the sum on which *ad valorem* duty is payable on the conveyance." According to this view, therefore, if the purchaser's obligation in the contract to pay the vendor's costs is honoured, the amount of the costs must be added to the purchase price for the purpose of assessing duty.

There are two cases noted in the books on stamp duties which have, or are said to have, some bearing on this question. The first is *Commissioners of Inland Revenue* v. *Glasgow and South Western Railway Company* (1887), 12 App. Cas. 315. The company, in exercise of their powers under a special Act, acquired certain property which consisted of land and buildings used by a firm of timber merchants for their business. A special jury was summoned under the appropriate legislation to assess the compensation payable to the firm and they assessed it under three heads: first, a sum for the value of the land; secondly, a sum for the value of the buildings, etc., on the land, and thirdly, a sum as compensation for loss of business. The conveyance by the firm to the railway company fully recited the jury's award and the payment of the three sums, the receipt of the first two of which was acknowledged by the conveyance and the receipt of the last whereof (it was recited) was the subject of a separate receipt. The question was whether the third sum paid, for compensation for loss of business, was part of the consideration for the sale of the premises for stamp duty purposes.

Nature of consideration

The House of Lords held that it was. The reasoning was as follows: The only duty of the jury under the relevant legislation was to assess the value of the land taken. In assessing such value, the value to the person who was compelled to sell could properly be taken into account, but in strictness what had to be ascertained was the value of the land, and once that was ascertained *ad valorem* duty was payable thereon. It may be argued from this decision that as the sum assessed for compensation for loss of business was in this case brought in to form part of the consideration only because it formed (in their lordships' view) part of the value of the land, something which cannot conceivably be said to form part of the value of the land (e.g., legal and fiscal costs and expenses) cannot form part of the consideration for the sale of the land. But this is a bad argument. The

only point which was decided in this case was that, on the true construction of the special legislation under which they acted, the jury had no power to award the vendor firm anything except as compensation for the loss of its lands, and that the compensation which the jury had assessed had therefore to be taken to be such compensation as they could properly award—that is, compensation for the loss of the lands. On that footing the compensation awarded could only be what the jury thought the land was worth and the award was equivalent to the value (ascertained as provided by the relevant legislation) of the land.

The other case is *Royal Insurance Company* v. *Watson* [1897] A.C. 1. The R. Insurance Company became entitled to acquire the undertaking of the Q. Insurance Company, subject to a term that the R. Company should take into their service the manager of the Q. Company at a specified salary, with liberty to commute the same on payment of a gross sum based on certain life tables. The R. Company exercised this power and paid the manager a gross sum, which the company then claimed to be entitled to deduct from its gross profits in estimating its profits for income tax. This was the subject of the appeal to the House of Lords. The House treated the question before it as one of capital or income; if it was an income payment, the sum paid in commutation could, perhaps, be deducted for income tax purposes; if it was a capital payment, it could not. And on this footing the decision was that the payment was a capital payment because it was part of the purchase money paid for the undertaking of the Q. Company which had been acquired by the R. Company. "... one of the companies sells to the other, and part of the consideration ... in respect of which the bargain was made, and without which it would not have been made, was the manager, and all that was incident to the manager in respect of the payments to be made to him, whether made at once or made in this form of commutation"—*per* Lord Halsbury, L.C., at p. 7. (I see that the Court of Appeal has just ruled that the Crown is not entitled to regard its servants as if they were chattels in the matter of compensation for loss of the servants' services: sixty years ago the higher tribunal had no such inhibitions about treating an insurance company manager as an element of consideration. But the manager had the consolation of over £55,000 received in commutation of his salary, and he did not have to pay any stamp duty.)

Time of payment material?

This decision is nearer the point, but the decision does not make it clear whether what was part of the consideration in the case was the actual payment of the commutation money, or the agreement (in certain circumstances) to make that payment. It should be noted that the opinion of the Controller, on which the present practice is based, speaks of the costs being "borne" by the purchaser, and, if this means paid by the purchaser, the opinion is, I think, justified; for the position in the case which came before the House of Lords, and that in the case where a purchaser pursuantly to a term in the contract pays the vendor's costs, are the same. The test by which many questions of stamp duty are answered is a purely pragmatic one, and this would be another instance of the application of such a test. But the time at which the amount of stamp duty which is attracted by a particular transaction is assessed is the time at which the transaction is carried into effect. In the case of a simple conveyance, that is ordinarily the time when the conveyance is executed by the vendor. What if at that time the purchaser has not paid the vendor's costs? Does that make any difference? In my opinion, it does.

The difference is not fundamental. In view of the decision in the *Royal Insurance Company* case it is, I think, difficult to argue that payment of the vendor's costs by the purchaser in pursuance of an obligation contained in the contract does not constitute an element in the consideration for the sale, and it is on the amount or value of the consideration for the sale that *ad valorem* duty becomes payable. And if a particular sum has been paid in discharge of the obligation, it is difficult to resist the conclusion that the amount of the payment and the value of this element of the consideration are the same, so that *ad valorem* duty is payable on that amount. But if at the time when the amount of the duty has to be assessed the obligation to pay the costs has not been discharged, its value to the vendor should not, I think, automatically be equated with the value of the relief which its discharge would afford to the vendor, for *non constat* that the purchaser will, or can, discharge it.

This is not fanciful. The doubts which still surround the question whether a mere right of action in contract is capable of assignment have discouraged such assignments, and one result of that is that there is, so far as I know, no authority on the question how the stamp duty on such an assignment should be assessed. But it would be beyond all reason to charge duty in respect of an obligation to pay a sum on the basis that the obligation must be fulfilled: to do so would be tantamount to denying the possibility of a breach of contract.

Conclusion

The trouble about points of doubt on the law or the practice relating to stamp duties is that it is hardly ever worth while disputing a decision of the Controller to the point of litigation. But if anyone is bold enough to chance his arm, the present practice of the Stamp Duty Office in the matter with which this article is concerned seems to me to be open to question. But if the point is to remain open for a favourable decision in the courts, the purchaser should not pay the amount of the costs and expenses which he has engaged himself to pay before the conveyance is presented for the stamp duty thereon to be adjudicated (for adjudication will be necessary if there is anything in the view which I have put forward). Otherwise the point must be considered as concluded against the taxpayer by the result of the *Royal Insurance Company* case.

"A B C"

THE EARNINGS RULE

The National Insurance Act, 1956, which received the Royal Assent and came into force on 5th July last, makes some inroad on the rule, which many people believe is unsound, whereby pensions under the National Insurance Acts may be diminished if the earnings of the pensioners exceed a certain figure. The effect of the rule in its original form was to make not working as profitable to many pensioners as working. The new Act enables the Minister to appoint a day after which an old age pensioner will be able to earn £2 10s. per week before his pension is reduced. Further, instead of the pension being reduced shilling for shilling, it will be reduced by sixpence for each complete shilling of earnings between £2 10s. and £3 10s. and a shilling for shilling thereafter. Comparable amendments are made in favour of widows and for the future the Minister is empowered to make changes by regulations which will require an affirmative resolution of both Houses of Parliament. It is all very bewildering for the pensioners, but it will clearly be not quite so profitable not to work as it was.

Landlord and Tenant Notebook

"CONVERSION OF OTHER PREMISES"

THE Housing Repairs and Rents Act, 1954, s. 35, provides for the decontrol of certain dwelling-houses, and *Higgins* v. *Silverston* [1956] 3 W.L.R. 448 (C.A.); *ante*, p. 448, appears to be the first reported decision in which s. 35, containing some of those provisions, has been interpreted. The first subsection extends decontrol to two classes, the first being "(*a*) separate and self-contained premises produced by conversion, after the commencement of this Act [30th August, 1954], of other premises, with or without the addition of premises erected after the commencement of this Act," and it was held that "conversion" meant more than improvement, and that the "other" of "other premises" did not mean "other premises which were not separate and self-contained premises."

The work done

In 1955 the defendant bought a three-storeyed house, the ground floor of which had previously been occupied by his vendor as a residence. It consisted of a living room, a bedroom, a kitchen and scullery, and an outside w.c. There was direct communication between kitchen and scullery only, and the vendor had used a bathroom/w.c. on the first floor in common with the tenant of that floor.

The defendant (i) divided the bedroom into two parts, one of which he made into a bathroom/w.c.; (ii) placed a door across the passage, thereby forming an entrance lobby; and (iii) made inside doors enabling occupiers to go from one room to the other without going out into the passage. He then let the flat to the plaintiff, requiring a premium of £150. She sued for the return of that sum as being an illegal premium within the meaning of the Landlord and Tenant (Rent Control) Act, 1949.

The county court judge considered that the flat looked different, but was fundamentally the same, and that there had been no production of separate and self-contained premises by conversion of other premises. The Court of Appeal upheld his decision.

Object of the section

The second limb of s. 35 (1) reads: "(*b*) premises erected after the commencement of this Act," and Denning, L.J., said that the object of the section was to encourage the building of new houses or the conversion of old ones by taking them out of the Acts altogether. In the case of conversion, the learned judge considered that Parliament had been very careful not to allow a landlord to escape too easily from the Acts. It must be remembered, his lordship said, that when the landlord incurs expenditure on the improvement or structural alteration of a house, he can increase the rent by 8 per cent. of the amount expended (see s. 2 (1) of the Increase of Rent, etc., Restrictions Act, 1920), but the house remains within the Acts; in order to take the house out of the Acts there must, therefore, be something more than the improvement or structural alteration of the house. (I will refer to this reasoning later.) The question was, what was that something more?

Change of identity

After dismissing an argument that "other premises" meant "premises which were not previously separate and self-contained" (which, if valid, would have implied that the putting in of an outer door, or a sink, or a bathroom, would take premises out of the Acts), Denning, L.J., gave two instances of what would, in his view, amount to the necessary "something more." (i) A coach-house in a mews which is, by much work, turned into a dwelling-house with all the necessaries of life; (ii) a dwelling-house previously capable of being used only for one family turned into two separate and self-contained flats with all the necessaries of life in each. In the one case the coach-house, in the other the original house, was "other premises"—and there had been a complete change of identity in each.

The conversion must, the learned judge said, be such that it can properly be described as the conversion of "other premises": "That is, there must be a change of identity."

Difference of subject-matter

There is, as Denning, L.J., said in the course of his judgment, a whole body of law under the Rent Acts on this point of "change of identity," and he cited *Langford Property Co., Ltd.* v. *Batten* [1951] A.C. 223 and *Capital & Provincial Property Trust, Ltd.* v. *Rice* [1952] A.C. 142 as showing the need for structural changes which alter substantially the character of the premises. "Character" must, no doubt, be liberally interpreted; for it will be noted that of the two examples suggested, one visualised a change of use, the other a change in the number of users.

For the purposes of comment I propose to refer to some older authorities. In *Phillips* v. *Barnett* [1922] 1 K.B. 222 (C.A.), three houses had been converted into a factory, openings having been made in walls, staircases removed, etc.; the houses were held to have lost their identity. In *Darrall* v. *Whitaker* (1923), 92 L.J.K.B. 882, a four-storeyed dwelling-house had been turned into a shop, offices and maisonette, let to different parties. Lush, J., said, as he had said in the court below in *Phillips* v. *Barnett*, that the house was "no longer the same subject matter." In *Langford Property Co., Ltd.* v. *Batten, supra*, a county court decision that a flat plus a garage was a different entity from the same flat without a garage was upheld, but on the ground that the question was one of fact. In *Capital & Provincial Property Trust, Ltd.* v. *Rice, supra*, Lord Porter and Lord Reid emphasised the need for something more radical than mere improvement or structural alteration by itself. In a sense it is true, said Lord Porter, that any division of one property into two creates something different, etc., while Lord Reid negatived the notion that functional change would suffice.

According to Denning, L.J.'s judgment, the "with or without the addition of premises erected after the commencement of this Act" with which s. 35 (1) (*a*) concludes harked back to *Langford Property Co., Ltd.* v. *Batten*, "where it was held that the addition of a garage might change the identity of a house." In my submission, what would be most important about that case was that it did not disturb *Hemns* v. *Wheeler* [1948] 2 K.B. 61 (C.A.), in which a bomb-damaged house had had some land added and an extra living-room built, but was held not to be a different house. It would be only the hypercritical who would point out that the dwelling-house dealt with in *Higgins* v. *Silverston* may well have been smaller in extent than the one vacated by the defendant's vendor, whose undemised premises presumably included the

whole of the ground floor subject to rights of way granted to the tenants of the floors above, but plus a *jus in alieno solo* (the bathing rights); when the door across the passage had been made, a description of the parcels by metes and bounds might have shown a different area and no appurtenance. But if, as in *Hemns* v. *Wheeler*, an addition will not necessarily change identity, neither need a reduction.

The 8 per cent. increase

But, in so far as the judgment relies on the right to increase rent conferred by the Increase of Rent, etc., Restrictions Act, 1920, s. 2 (1)—and that circumstance is mentioned no fewer than three times, the passage on the last occasion running: "We are not prepared to subscribe to an interpretation which would enable landlords so easily to avoid the Acts altogether, when their proper remedy is plainly to increase the rent by the permitted amount"—the reasoning does appear to ignore the fact that, as far as appeared, there was no rent which could be so increased.

The subsection says: "The amount by which the increased rent . . . may exceed the standard rent shall . . ." and, there having been no change of identity (as in *Solle* v. *Butcher* [1950] 1 K.B. 671 (C.A.)), it could only be by reference to some past letting, of the flat or of the comprising property, that any standard rent could be determined. It is true that strenuous research may sometimes produce evidence of such past letting: see the criticism—"the hasty and ill-considered language of this statute may work very great injustice," etc., uttered by MacKinnon, L.J., in *Davies* v. *Warwick* [1943] K.B. 329 (C.A.). But in *Higgins* v. *Silverston* there was nothing to show that the particular flat had ever been let or that the whole house had ever been let, and it may be that the defeated defendant left the court trying to work out $0 : x = 100 : 108$.

What a landlord in his position should be advised to consider would be an agreement by which his intending tenant agreed to pay either him (*R.* v. *Fulham, Hammersmith and Kensington Rent Tribunal, ex parte Philippe* (1950), 94 SOL. J. 456) or the contractor (*R.* v. *Birmingham (West) Rent Tribunal, ex parte Edgbaston Investment Trust, Ltd.* [1951] 2 K.B. 54) for the work.

R. B.

HERE AND THERE

LEISURE AND DIGNITY

ONCE upon a time it was not felt to be part of the function of a lady or gentleman to work; their proper sphere was the practise of virtue in that state of life to which it had pleased God to call them, the contemplation of eternal truth and meditation on their country's good. In the days when this was generally accepted as the natural order, their delusive beauty and the sweetness of their presence cast a veil over the fact that many of them did nothing of the kind. Some, of course, devoted themselves to active pursuits as soldiers, sailors, judges or administrators, but those were, for their order as a whole, works of supererogation. But now we have changed all that, and those who have inherited or achieved any sort of privileged circumstances go about with a more or less pronounced sense of guilt nagging them into some visible justification of their existence. We see Lady Docker impelled to explain that if she wears striking clothes it is for the sake of the workers. It is no longer felt that simply by being what he is the virtuous man radiates an influence for good (like the supposed Corregidor in Browning's poem). Now we must all be (or appear to be) busy about many things, like Martha in the New Testament. It is not, I think, just a feverish attempt to set a good example to people like the character (described as a labourer) who recently explained in a county court that he got £5 19s. a week from unemployment benefit and national assistance. "Therefore," he said, "I have refused work because the pay offered was only £7 a week." It may be the Leisure State for him but sur-tax payers (impoverished though they may be) do not like it to be thought that they are anything less than busy and preoccupied.

A WORKING WORLD

IT is rather depressing to see even Her Majesty's judges at pains to establish, for all to see, the laboriousness of their lives. It was not always so, not in the fifteenth century, for example. "You are to know further," said Fortescue, C.J., to his pupil the Prince of Wales, "that the judges of England do not sit in the King's Courts above three hours in the day, that is from eight in the morning until eleven." After that came the luncheon adjournment with no sittings to disturb the afternooon, the judges being free to "spend the rest of the day in the study of the laws, reading of the Holy Scriptures and other innocent amusements at their pleasure." How sad, by contrast, that the Master of the Rolls should recently have felt obliged to repudiate so anxiously the suggestion that the time of the Court of Appeal was not fully occupied, emphasising that he was unaware of any day, or the likelihood of any day, when there would not be cases ready for hearing in the courts. He then went on to draw a moving picture of the unremitting application of its members. Their regular working hours are so taken up with court sittings that their reserved judgments must be written in their spare time. Sometimes a member of the court is called away to other public business of importance. (The Master of the Rolls himself has lately been doing duty in another place with the Lords of Appeal in Ordinary.) When this occurs do the two odd Lords Justices joyfully retire to "other innocent amusements"? By no means. They hunt for interlocutory appeals which can be heard by a court of two. Or if any High Court judge looks as if he might be in danger of succumbing to the dangerous lure of leisure they co-opt him to make a quorum of three. If all else fails they will themselves descend to the arena of first instance there to manufacture a little work to be stored up for a future day for their brethren in the Court of Appeal, like bees bringing raw material to the hive.

TIME TO RELAX

IN so far as this statement was addressed to the public at large, one fears that, coming as it did almost on the eve of the two months Long Vacation, it will not be greeted with the sympathetic understanding which it deserves. Last year, they will say, the start of the vacation showed 113 appeals undisposed of, and this year it must be somewhere round about the hundred mark. Why disappear for two solid months and leave them in the air? You see, the public are never satisfied. If there is a long list waiting they say the judges

are taking it inordinately easy. If there are no arrears they say the Bench is over-manned. But one doubts if the public will ever understand the plain good sense of the 10.30 to 4 hours and the long vacational breaks in the court sittings, which are not merely a matter of relaxing (important though that is) after the strain of concentrated attention. The public can never believe that a man is working unless they actually see him working. To them the surgeon is only working if he's in the operating theatre, the actor if he's on the stage, the shopkeeper if he's behind the counter, the lawyer if he is actually in court. And yet every gardener knows that the preparation of the soil, not to mention the care of his tools, is more than the actual planting. Every decorator knows that the preparation of the surface is more than the actual painting. So with the lawyer. When can he keep abreast of current law, prepare his judgments (if he is a judge), his opinions and pleadings (if he is at the Bar), his letters and his advice to his clients (if he is a solicitor), when can he talk over doubtful points with his colleagues if not when he is free from court attendance for a few hours or a few weeks? It seems a pity that the judges should ever have to be apologetic or on the defensive about mere "man hours" as if anyone had a right to expect them to behave as bustling business executives. Fortescue, C.J., was quite sure that it was all right. "It seems rather a life of contemplation than of much action," he said. "Their time is spent in this manner free from care and worldly avocations." And to this he attributes their integrity and "as an especial dispensation of Providence" their large, happy families.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

The Compensation Fund

Sir,—As a solicitor practising in commercial employment who has to pay for his practising certificate out of his own pocket I remain unconvinced by the answers given by Sir Lancelot Joynson-Hicks to the objection of the "tame" solicitor to contributing to the Compensation Fund.

First, in general we do not owe our appointment, even in part, to our practising certificate. Some of us take up commercial employment immediately upon admission; most of us are not asked upon recruitment whether we hold or have held certificates and for many of us it is not a necessity of our employment that we maintain them. True, we share in the benefits which the honour and prestige of the profession enjoys. Likewise the barrister, architect, medical practitioner and accountant share in the benefits of their respective professions but none of them has to pay thirteen pounds (if the contribution is raised to the new permissible maximum) per annum for the privilege.

As for Sir Lancelot's second answer, I would respectfully suggest that the private practitioner, however distinguished or honest, must gain considerably from the existence of the Fund as it provides assurance to the public that it may safely entrust its money to the privately practising side of the profession. In any case the Compensation Fund indemnifies against the dishonesty of a clerk as well as against that of the principal, and even the most distinguished and honest solicitor may have the misfortune to take on a dishonest clerk. The "tame" solicitor, who does not indulge in "banking" activities, can gain nothing from this; indeed the very need for the Fund might be said to hint that a solicitor is not all he might be.

Possibly, most "tame" solicitors can recoup the expense of a practising certificate from their employers and this may account for the paucity of objections to the proposed increase. If this is so, the refusal to exclude the "tame" solicitor from liability for the increase is even more shameful, as it means that local authorities, nationalised and other industries and central government are to be called upon to double their subsidy to the private practitioner.

Most "tame" solicitors take out certificates as they feel it is right to support the profession and, for myself, I am prepared to continue to contribute five pounds per annum to the Fund, but, if the increase is to be levied on the "tame" solicitor as well as upon his privately practising brother, I propose, as a gesture of protest, not to renew my certificate.

"TAME SOLICITOR."

Recruitment to the Profession

Sir,—The letter of Mr. S. P. Best appearing in your issue of the 21st July was most interesting, and I hope his suggestions will receive serious consideration by all who may be concerned—solicitors and clerks.

In July, 1954, I had correspondence with the Managing Clerks' Association regarding the leaflet issued with the *Law Society's Gazette* of that month concerning the examinations for managing clerks. In that correspondence, I expressed the view that the good intentions of The Law Society and the Managing Clerks' Association in instituting the examinations will not attain fulfilment unless those who satisfy the examiners are given real opportunities for advancement in the profession. At present the examinations merely create discrimination between managing clerks, but success in them does not open a door to higher status.

A scheme such as that proposed by Mr. Best would provide incentives, but I suggest that his idea should be linked with a scheme for issuing certificates of competency for managing clerks. It is difficult for a managing clerk to find time to study, and with this in mind I would like to repeat below short particulars of the proposals which I put forward to the Managing Clerks' Association about two years ago.

Arrangements could be made to allow managing clerks, who satisfy certain conditions regarding age, character and experience, to be exempted from the preliminary examination of The Law Society and to sit for (say) the final solicitors' examination in stages, e.g., two papers at a time, and certificates of competency could be issued to those who attain a required standard. On obtaining certificates of competency in all the subjects covered by the solicitors' examinations, a managing clerk should be allowed to apply for admission to the Roll of Solicitors, although some may prefer to remain as certificated managing clerks. To balance matters, the minimum number of marks required for a certificate of competency in a single subject could be higher than that required of articled clerks taking the whole range of subjects at one time.

Managing clerks of the old type who carried the responsibility of the practical work, while the principals dealt with clients and gave general direction on matters of policy, are decreasing in number, and young newly qualified solicitors cannot completely take their place because of lack of experience.

The opportunities offered by such a scheme could greatly assist in attracting to, and keeping in, the profession the best type of men who were formerly the managing clerks of the kind mentioned.

In case there may be those who are apprehensive that such proposals may create a surfeit of applications for admission to the Roll of Solicitors, it may be pointed out that the preliminary conditions mentioned above will limit numbers, and not all managing clerks will desire to qualify, and of those that have the desire only some will make the grade and the present standard will be maintained.

I am of opinion that solicitors in established practices would find such a scheme to be of real benefit to them as it is more than likely that a managing clerk who has been on the staff for some years, and eventually qualifies as a solicitor by the means suggested, will prefer to stay with the firm he has previously served, and, although he will no doubt ask that his new status should be properly recognised, his demands will be modest compared with a solicitor of the same age and experience who qualified as a young man.

W. BOWTELL.

Scarborough.

Recruitment to the Profession

Sir,—Have those who talked of a *viva voce* examination of candidates stopped to think what an adoption of their suggestion would involve? Five hundred candidates for the Final is not an uncommonly large number. If three examiners give each candidate twenty minutes (and that would probably be too short a time) each of those three examiners would have to give 133 hours, or twenty or so working days of his time for one Final, and there are three Finals each year. Additionally, time would have to be spent in conference between the three, and in the making of reports. Also must it be borne in mind that a *viva voce* examination would be pointless unless carried out by practising solicitors of wide experience, and sound judgment. Could suitable men, willing to give the time, be found?

The expression "managing clerk" is difficult of definition, but why should "managing clerks," to use the words of Mr. S. P. Best, "enjoy" any "relaxation of conditions"? No one suggests that a nurse or a physiotherapist or a chiropodist should be given an easy route to a medical qualification. The managing clerk normally spends most of his time working on one branch of the law, and sometimes his knowledge of the law, as distinguished from the practice affecting that branch, is far from complete. Many practising solicitors must have come across men who have been conveyancing managing clerks for years, and yet have experienced difficulty with Final questions requiring a knowledge of the law appertaining to real property.

Every solicitor, on qualification, should have a sound overall knowledge of the law, and from the public viewpoint it is undesirable that a man, merely because he has been a solicitor's managing clerk, should be allowed to practise as a solicitor with less knowledge of the law than that required of others; moreover, a practising certificate implies a general qualification, and members of the public would have no means of knowing of any limitation in a particular case.

My own view is that the present concession to ten-year men goes too far, and that every ten-year man should be required to attend The Law Society's Law School, where he could be taught such law as he ought to know.

JAMES A. JOHNSON.

Dover.

BOOKS RECEIVED

McCleary's County Court Precedents. Volume I, General Jurisdiction: Transfer of Proceedings. Volume II, Special Statutes: Enforcement: Appeals: Tables: Index. Edited by JOHN F. P. EVANS and J. W. PRYKE. pp. xlvi; xx and (with Index) 888. 1956. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £4 4s. net. per set.

British Tax Review: June, 1956. Editor—G. S. A. WHEATCROFT. pp. xii and 112. 1956. Sweet & Maxwell, Ltd. Annual subscription for 1956 (three issues) £1 2s. 6d.

Stroud's Judicial Dictionary of Words and Phrases. Third Edition. First Supplement (to January, 1956). By PETER ALLSOP, M.A., Barrister-at-Law. pp. 117. 1956. London: Sweet & Maxwell, Ltd. 17s. 6d. net.

Advocacy at Petty Sessions. By B. FRASER HARRISON, Solicitor of the Supreme Court. pp. x and (with Index) 111. 1956. London: Sweet & Maxwell, Ltd. 15s. net.

Schedule A Tax. Its Assessment and Collection. Fourth Edition. By DONALD L. FORBES, F.C.A. pp. xii and (with Index) 108. 1956. London: Gee & Co. (Publishers), Ltd. 15s. net.

Annotations to Acts, 1955. pp. 72. 1956. London: Her Majesty's Stationery Office. 10s. 6d. net.

S.I. Effects, 1955. Including Supplement to Numerical Table, S.R. & O. and S.I. pp. iv and 259. 1956. London: Her Majesty's Stationery Office. 8s. net.

Trades Register of London. 1956 Edition. pp. vi and 735. 1956. London: Kemp's Printing and Publishing Co., Ltd. £3 3s. net.

Crime and the Penal System. A text-book of criminology. By HOWARD JONES, B.Sc. (Econ.), Ph.D. pp. (with Index) 269. 1956. London: University Tutorial Press, Ltd. 16s. net.

The Law List, 1956. Edited by LESLIE C. E. TURNER. pp. xxiv and 2493. 1956. London: Stevens & Sons, Ltd. £1 10s. net.

The Law and Practice of the Valuation of Licensed Premises. By RONALD WESTBROOK, A.A.I. pp. xix and (with Index) 297. 1956. London: Sweet & Maxwell, Ltd. £2 5s. net.

Emmet's Notes on Perusing Titles and on Practical Conveyancing. Fourteenth Edition. Volume 2. By J. GILCHRIST SMITH, LL.M., Solicitor (Honours), Deputy Town Clerk, County Borough of Middlesbrough. pp. cxxx and (with Index) 699. 1956. London: The Solicitors' Law Stationery Society, Ltd. £4 net.

Administrative Jurisdiction. By Sir CARLETON KEMP ALLEN, Q.C., M.C., D.C.L., F.B.A., J.P., of Lincoln's Inn, Fellow of University College, Oxford. pp. xv and (with Index) 101. 1956. London: Stevens & Sons, Ltd. 15s. net.

The Law of Burial, Cremation and Exhumation. By M. R. R. DAVIES, Ph.D. (Cantab.), LL.M. (Leeds), D.P.A. (London), of the Middle Temple, Barrister-at-Law. With a Foreword by the EARL OF VERULAM, M.A., F.R.H.S., J.P., President of The Cremation Society. pp. xlvii and (with Index) 224. 1956. London: Shaw & Sons, Ltd. £1 7s. 6d. net.

A Parliamentary Dictionary. By L. A. ABRAHAM, C.B., C.B.E., B.A., of the Inner Temple, Barrister-at-Law, and S. C. HAWTREY, B.A. With a Foreword by Sir EDWARD FELLOWES, K,C.B., C.M.G., M.C., Clerk of the House of Commons. pp. viii and (with Index) 224. 1956. London: Butterworth & Co. (Publishers), Ltd. £1 1s. net.

Sutton and Shannon on Contracts. Fifth Edition. By K. W. WEDDERBURN, M.A., LL.B., of the Middle Temple, Barrister-at-Law. 1956. pp. civ and (with Index) 556. 1956. London: Butterworth & Co. (Publishers), Ltd. £1 12s. 6d. net.

Report of the Special Committee on The Federal Loyalty—Security Program of The Association of the Bar of the City of New York. pp. xxvi and (with Index) 301. 1956. New York: Dodd, Mead & Co.

Mr. G. S. ASHWORTH, town clerk of Bridport, Dorset, has been appointed clerk to Spalding Rural District Council.

Mr. H. W. CARTER, T.D., solicitor, senior assistant secretary of the South Wales Division of the Central Electricity Authority, has been appointed secretary of that Division.

Mr. N. K. HUTTON, C.B., has been appointed First Parliamentary Counsel in succession to the late Sir John Rowlatt, Q.C. Mr. J. S. FIENNES has been appointed Second Parliamentary Counsel in his place.

Mr. JOHN AUSTIN WESTON, senior assistant solicitor to Derby Corporation, has been appointed deputy town clerk to Peterborough City Council.

Mr. Harry Disley, solicitor, of Accrington, was married on 19th July to Miss Audrey Mary Donohoe, of Accrington.

Mr. Edward Thomas Timperley, solicitor, of Crewe, was married on 14th July to Miss Mary Noble.

Mr. Gladstone Henry Clark, retired solicitor, of Southsea, Hants, left £193,732 (£193,615 net).

REVIEWS

British Tax Review, Volume 1, No. 1. June, 1956. Editor: G. S. A. WHEATCROFT, M.A. (Oxon). London: Sweet & Maxwell, Ltd. Annual subscription for 1956 (three issues) £1 2s. 6d.

Not only is taxation a subject of special study by some lawyers and most accountants but, unfortunately, it has now become so heavy, so complex and so all-pervading that there is scarcely a business transaction or legal problem into which it may not enter. A striking example is provided by the first article in this journal: one might have thought a running down case fairly far removed from tax but—as demonstrated by that article: "The Tax Element in Damages" by Mr. Melford Stevenson, Q.C., and Mr. Alan Orr—since *British Transport Commission* v. *Gourley* [1956] A.C. 185 considerations of taxation may be important in such an action even at such an early stage as the pleadings and particulars.

This new venture is a quarterly review from the same publishers as, and generally similar in character to, that old favourite the *Conveyancer*, and aims to be of use to the taxation expert, to the general practitioner who must know something of tax whether he likes it or not, to the practising lawyer and accountant alike and to the company director or secretary. To cover so wide a field effectively is not easy but the first issue makes an admirable start. The lawyer mainly concerned with common-law litigation will be particularly interested in the article already mentioned; the "conveyancing" or "family" solicitor in Mr. D. C. Potter's review of what can and cannot be done with deeds of covenant, and in the first of a series by Mr. G. H. Newsom, Q.C., on the valuation of assets (other than shares) for estate duty purposes; the accountant and tax specialist in Mr. Edey's discussion of stock valuations, and everyone in Mr. Peacock's contribution on the economic aspects of the current Finance Bill.

In addition to the articles we have mentioned there are others and a series of Notes on Cases, etc. If the standards of the first number, particularly its diversity, can be maintained—and there is no reason to suppose that it should not—your reviewer thinks this publication should have a bright future before it and he commends it. The only quarrel he has with it is its title: it makes no claim as he understands it to deal with the taxation systems of what Mr. Noel Coward referred to as "the Colonies, Dominions and Protectorates," all of which are as British as the United Kingdom, and he would have thought that "United Kingdom Tax Review" would have been more in accord with normal usage.

Rating Valuation Practice. Fourth Edition. By PHILIP R. BEAN, F.R.I.C.S., F.A.I., F.R.V.A., and ARTHUR LOCKWOOD, M.B.E., F.R.I.C.S., F.A.I., F.R.V.A. 1956. London: Stevens & Sons, Ltd. £2 5s. net.

This fourth edition of a well-known and useful text-book follows the general lines of its predecessors although important variations have been made to meet the requirements of the development in the law and practice of valuation. The main changes, which have been occasioned by the Valuation for Rating Act, 1953, and the Rating and Valuation (Miscellaneous Provisions) Act, 1955, occur in the chapters on the preparation and amendment of the valuation list and on the assessment of residential property. The general scope of the work is apparent from the analysed table of contents and it covers all aspects of rating valuation from the basis of the assessment and how to appeal against assessments, including the procedure involved, to the detailed methods of valuation to be adopted in individual cases. There is a chapter on the taxation of land and buildings and a short chapter on metropolitan rating. As usual, valuable appendices are included which in this edition give the relevant part of the Local Government Act, 1948, Valuation for Rating Act, 1953, Rating and Valuation (Miscellaneous Provisions) Act, 1955, and the Lands Tribunal Rules, 1949 and 1951, with the other necessary statutory instruments. There is a table of cases and a first-class index, though the modernisation of the text resulting in the substitution of "departmental stores" for that clumsy and dated word "emporiums" has been overlooked by the index. But why not a table of statutes?

This book has already become a firm favourite, not only with students for professional examinations but also with practitioners, and this new edition can be readily recommended as a useful and well-written guide to the law and procedure to any coming into contact with rating work as a result of the revaluation.

Kime's International Law Directory for 1956. Edited and compiled by PHILIP W. T. KIME. London: Kime's International Law Directory, Ltd. 15s. net.

In the sixty-fourth year of its publication Kime's needs no recommendation, and it is sufficient to say that in this edition all the familiar features are retained and brought up to date and will be found as useful as ever.

Butterworths Costs. Fourth Cumulative Supplement. Edited by B. P. TREAGUS, Principal Clerk, Supreme Court Taxing Office, and H. J. C. RAINBIRD, of the Supreme Court Taxing Office. Including a section on quarter sessions by ALFRED SWIFT, Deputy Clerk of the Peace, County of London Quarter Sessions. 1956. London: Butterworth & Co. (Publishers), Ltd. £1 5s. net. Complete work £7 10s. net.

This supplement brings the law generally up to 1st March, 1956, and contains, *inter alia*, amendments and revised precedents of bills of costs covering the extended jurisdiction in the county courts; additional rules to the practice in the High Court; the fixed costs allowed to the plaintiff under the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules, 1951; a precedent for an appeal to the Court of Appeal by case stated under Ord. 58A from various tribunals which has effect from 10th April, 1956; and the latest lists of charges for Parliamentary agents, attorneys, solicitors, etc., in the House of Lords and the House of Commons, to be used in respect of bills presented on or after 15th November, 1955.

The Law of Burial, Cremation and Exhumation. By M. R. R. DAVIES, Ph.D. (Cantab.), LL.M. (Leeds), D.P.A. (London), of the Middle Temple, Barrister-at-Law. London: Shaw & Sons, Ltd. £1 7s. 6d.

The Earl of Verulam, President of the Cremation Society, in his foreword to this book, having pointed out that with a population of over 50,000,000 and a yearly death rate of more than 500,000, the disposal of the dead is a problem of considerable magnitude, calls attention to the need for amendment and consolidation of the law relating to Burial Grounds and Cremation. Dr. Davies is of the same opinion, and in his preface states that the principal purpose of this book "is to give as clear and comprehensive a statement as is reasonably possible of the important legal principles, provisions and cases underlying the bewildering complexities of the law relating to the disposal and disinterment of the dead."

He deals with his subject-matter under three heads: the law relating to Burials; Cremation; and the law relating to Exhumation and Disused Burial Grounds. The gratitude of the legal profession is due to the author for his clear exposition of that very technical branch of legal learning concerned with gifts for the maintenance of graves. Every conveyancer would be wise to commit chap. 7, a matter of sixteen pages only, to memory. It includes Romer, J.'s masterly judgment in *Re Chardon* [1928] Ch. 464. In his classification and examples of invalid gifts, the author calls to mind the too often overlooked decision in *Re Elliott* [1952] Ch. 217, where the bequest was held to be void as infringing the perpetuity rule and the further bequest of the residue took effect unfettered by the illegal condition precedent which was merely *malum prohibitum* and not *malum in se*.

The Section on Cremation (chaps. 7 and 8) gives clearly and concisely all that one can reasonably wish to know about cremation powers, procedure and offences.

In Section 3, the jurisdiction of coroners in exhumation cases is discussed in exactly two and a half lines; too little for a subject which has come recently under public notice in more than one case. In all other respects the book appears to be free from imperfections. The arrangement of the matter and the style of printing leave nothing to be desired. Statutory provisions and enactments are set out in heavier type than the rest of the text, and so it follows that all words in bold print are absolutely authoritative and binding, while those in ordinary print do not possess legal sovereignty to the same degree. It is almost unnecessary to state that the format is excellent and, it may be added, the price, for a book of such quality, is reasonable.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

House of Lords

NATIONAL SERVICE: OFFICIALS OF JEHOVAH'S WITNESSES

Walsh *v.* Lord Advocate

Lord Morton of Henryton, Lord Goddard, Lord MacDermott, Lord Keith of Avonholm and Lord Somervell of Harrow

19th July, 1956

Appeal from the Second Division of the Court of Session ([1955] S.L.T. 393).

The appellant claimed that the body known as Jehovah's Witnesses was a religious denomination for the purposes of para. 2 of Sched. I to the National Service Act, 1948, and that as a "pioneer publisher" and "congregation servant" he was a regular minister of that denomination. By para. 2, exemption from military service was granted to "a man in Holy Orders or a regular minister of any religious denomination." All baptised members of Jehovah's Witnesses were recognised by the body as ministers commissioned to preach the Gospel. Each congregation (consisting of a minimum of ten members) was in charge of a "congregation servant." A "pioneer publisher" ministered to persons in an assigned territory, preaching from house to house and conducting Bible studies. The Court of Session having rejected his claim, he appealed to the House of Lords.

LORD MORTON OF HENRYTON said that he agreed with the judgments delivered in the Second Division of the Court of Session. It was not necessary to examine the question afresh, but he would give his own answer to the question: Who could be said to be a regular minister of this denomination if the appellant did not answer that description? The organisation of the body was such as to create no such office as a "regular minister" in the sense in which the words were used in the Act. All authoritative pronouncements among Jehovah's Witnesses were made by the president of the society. The seven directors of the society, elected by the members, were, for practical purposes, the spiritual governing body. At the other end of the organisation was a person who had become a member by baptism. It was one of the essential tenets of the body that every member was by virtue of his membership a minister commissioned to preach the Gospel. Thereafter he was required to devote his life, or such part of it as was not occupied in the essential discharge of family responsibilities, to preaching the Gospel. In the eyes of this body every member became a "minister" and came under very extensive obligations as soon as he was baptised and continued to be a minister for life unless he was expelled from the body. The appellant was baptised at the age of twelve years and three months. He was appointed a pioneer publisher when he was just over fifteen years of age, and congregation servant of the Dunbarton congregation when he was nearly eighteen years old. In that congregation there were twenty-nine members of whom nineteen were baptised members. It was argued that the appellant became a minister on baptism and a regular minister within the meaning of the Act on his appointment as a pioneer publisher or at latest on his appointment as a congregation servant. His lordship could not accept this argument. The body contained a number of posts, no one of them of such a kind as to bring the holder within the description "a regular minister of any religious denomination" as those words were used in the Act. His lordship derived no assistance in construing the Act from the words of Lord Justice-Clerk Inglis in *Lord Advocate* v. *Ballantyne* (1859), 3 Dru. 352, 371.

The other noble and learned lords agreed in dismissing the appeal. Appeal dismissed.

APPEARANCES: *Sir Lynn Ungoed-Thomas*, Q.C., and *S. H. Noakes* (both of the English Bar) and *G. C. Emslie* (of the Scottish Bar) (*Gouldens*, for *Scott & Glover*, W.S., Edinburgh, and *Burns, Reid & Tilston*, Glasgow); *Lord Advocate Milligan, Harold Leslie*, Q.C., and *Manuel Kissen*, Q.C. (all of the Scottish Bar) (*Solicitor to the Ministry of Labour and National Service*, for *Macpherson & Mackay*, W.S., Edinburgh).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[1 W.L.R. 1002**

Court of Appeal

INCOME TAX: SETTLEMENT: REVOCABILITY: SETTLOR OUT OF JURISDICTION: INCOME INCLUDED IN SETTLOR'S ASSESSMENT FOR SUR-TAX

Inland Revenue Commissioners *v.* Kenmare

Singleton, Morris and Romer, L.JJ. 8th June, 1956

Appeal from Danckwerts, J. ([1956] Ch. 220; 99 Sol. J. 872.)

A settlement of a value of some £700,000 made in 1947 by a settlor at all material times resident out of the jurisdiction of property situated in the jurisdiction contained in cl. 5 thereof the following provision: "(*a*) Notwithstanding the trusts hereinbefore declared the trustees if they in their absolute discretion think fit may at any time and from time to time during the lifetime of the settlor . . . declare that any part of the trust fund [not exceeding in any one period of three consecutive years the sum of £60,000] . . . shall thenceforth be held in trust for the settlor absolutely and thereupon the trusts hereinbefore declared concerning the part of the trust fund . . . to which such declaration relates shall forthwith determine and the trustees shall thereupon transfer such part of the trust fund . . . to which such declaration relates to the settlor absolutely . . ."

The settlor was assessed to sur-tax under s. 38 (2) of the Finance Act, 1938, in respect of her income under the settlement. The assessment was discharged by the Special Commissioners on the ground that s. 38 had no application to a person resident outside the jurisdiction, and they did not in the circumstances consider whether the settlement contained a power of revocation. The Crown appealed from that decision, and Danckwerts, J., held that the settlement contained a power of revocation and that the assessment to sur-tax was properly made on the settlor. The settlor appealed.

SINGLETON, L.J., said that it was claimed by the commissioners that the trustees had or "may have power . . . to revoke or otherwise determine the settlement or any provisions thereof" within the meaning of s. 38 (2) of the Finance Act, 1938. The appellant settlor contended that there was no such power in the settlement, and it was submitted that there was no power given to revoke or to determine the settlement or any provision thereof. Counsel for the commissioners had referred to the definition of "settlement" in s. 41 (4) (*b*) of the Act of 1938, and pointed out that a document was not essential to a settlement, but was merely the legal way of doing it. He submitted that if there was power in a settlement to hand over to the settlor the whole fund, such a power would be a power to determine the settlement, while, if there was power to hand over one-half of the fund, that would be a power to make a partial revocation or determination and would be caught by subs. (2)—and he had drawn attention to the wording of subs. (2) (*b*). He asked the court to read the word "provision" in subs. (2) (*a*) as covering the amount provided, or anything affected, by the settlement. On a fair reading of the terms of the settlement he (his lordship) was satisfied that the position created was within the words of s. 38 (2) (*a*) and that consequently the income from the settled fund fell to be treated as that of the settlor. The words "or may have" followed the words "if . . . any person has". It appeared to him that the term of the settlement that the trustees might pay out to the settlor in any three years the sum of £60,000 (with a carry-forward) might result in time in the fund being exhausted. That was not likely unless there should be a fall in the value of the investments held under the trusts, but it was something which might happen—in other words it was covered by the words "may have." If the settled fund disappeared that would be a determination—not a revocation—of the settlement. There would be nothing left except a document. If the position created by the settlement was such that that might be brought about, the case was then within s. 38 (2) (*a*), and, moreover, if the whole of the settled fund went, there was nothing left to which the trusts in remainder in the settlement could apply and, consequently, there was, or would be, a determination of that provision, cl. 3. Thus, he agreed with the

conclusion at which Danckwerts, J., arrived, though he did not go quite so far as he did in some respects. On the other point in the case it was submitted on behalf of Lady Kenmare that s. 38 of the Act of 1938 did not apply to the settlement as the settlor had not been and was not resident in this country, nor were the trustees, and the settlement was a foreign settlement. From the date of the settlement the income was that of the trustees, and Parliament had no jurisdiction to lay a charge of tax on a non-resident in respect of income to which that non-resident person was not entitled; the trustees having a discretion whether they paid her or not. Reliance was placed on the decision of the House of Lords in *Perry* v. *Astor* (1935), 19 Tax Cas. 255. That case arose under s. 20 (1) (*a*) of the Finance Act, 1922, which might be described as the forerunner of s. 38 of the Act of 1938. Counsel for the commissioners pointed out that s. 20 (1) (*a*) of the Act of 1922 was repealed by the Act of 1938. He referred to ss. 38 (7) and 41 (4) (*a*) of the Act of 1938, and added that income from investments in this country would be chargeable to tax against a person who was not residing in this country. He (his lordship) agreed with the judgment of Danckwerts, J., that this point failed. Before this court it had been further submitted for the settlor that Parliament could not have intended that s. 38 should extend to a case of this nature in view of the provisions of Pt. I of the Third Schedule to the Act (applied by s. 38 (5)). It was argued that if the settlor paid the tax he or she would not be able to recover it. He knew of no reason why the settlor should not be allowed, if necessary, to obtain leave to serve a writ outside the jurisdiction and to obtain judgment against the trustees if he had paid. If a judgment so obtained could not be enforced that was the misfortune of the settlor, who appointed trustees not resident here and gave them charge of funds invested in this country. This point failed and the appeal should be dismissed.

MORRIS and ROMER, L.JJ., delivered concurring judgments. Appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *F. Heyworth Talbot*, Q.C., *F. N. Bucher*, Q.C., and *H. H. Monroe* (*Theodore Goddard & Co.*); *Geoffrey Cross*, Q.C., *Sir Reginald Hills* and *E. Blanchard Stamp* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 527**

INCOME TAX: SETTLEMENT: REVOCABILITY: "POWER TO DETERMINE SETTLEMENT OR ANY PROVISION THEREOF"

Saunders *v.* Inland Revenue Commissioners

Singleton, Morris and Romer, L.JJ. 11th June, 1956

Appeal from Wynn Parry, J. ([1956] 1 Ch. 283; 99 SOL. J. 873).

A settlor made a settlement of £100 for the benefit of a specified class, which included the settlor's wife. He later transferred a further £25,000 to the trustees of the settlement, making a total fund of £25,100 which was subject to the trusts of the settlement. By a clause in the settlement it was provided that the capital of the trust funds should not be reduced below £100. For the year 1951–52 the settlor was assessed under s. 38 (2) of the Finance Act, 1938, to sur-tax on the income from the property comprised in the settlement. Wynn Parry, J., dismissed the settlor's appeal from a decision of the Special Commissioners.

SINGLETON, L.J., said that the question for determination arose under s. 38 (2) (*a*) of the Act of 1938 and, in particular, under the words "or any provision thereof." It was urged on behalf of the settlor that in its context the word "provision" could only mean a written clause in the document. For the Crown it was submitted that "provision" in s. 38 (2) meant the result ensuing from that which was provided by a written instrument or part of it: that one could not determine a document while one could determine a provision made for someone, and it was claimed that the word "provision" as used in the section had different meanings, indeed, that it had different meanings in the two places in which it was used in subs. (1) (*a*). It was not suggested that there was any power to revoke the settlement or any provision thereof. He (his lordship) was satisfied that the words "of any provision of the settlement" at the end of s. 38 (1) (*a*) and in s. 38 (1) (*b*) meant a clause in the document. The word "provision" ought to be given the same meaning throughout the section. For this reason he did not accept the submission of the Crown. A person who was given power to revoke a settlement or any provision thereof might do so by a document in writing. If he was also given power to determine the settlement, or any provision thereof, one way in which he could do that (assuming the power) was by taking away the whole of the settled fund available for the purposes of the particular provision. That would be a determination. The power of trustees to pay out, or to withdraw, a part of the capital fund was not a determination of the settlement or of any provision thereof: it was something envisaged by the terms of the settlement. The balance remained subject to the trusts of the settlement. In the case under appeal the trustees were given power to make payments of capital (subject to the consent of the settlor during his life) to persons within the specified class so long as the capital of the settled fund did not fall below £100 during the settlor's lifetime. The result was that, with the necessary consent, they might make payments out of £25,000, retaining only £100. In principle there was no difference between such a case and one the other way round in which there was power to pay out only £100, so as not to reduce the capital below £25,000. It was obviously an effort to get round s. 38 (2) of the Act. In the circumstances of the case there was not power to revoke or to determine the settlement or any provision thereof, and the case was not brought within the provisions of s. 38 (2).

MORRIS and ROMER, L.JJ., gave concurring judgments. Appeal allowed. Leave to appeal to House of Lords.

APPEARANCES: *L. C. Graham-Dixon*, Q.C., and *A. P. L. Barber* (*Henry Pumfrey & Son*); *Geoffrey Cross*, Q.C., *Sir R. Hills* and *E. B. Stamp* (*Solicitor of Inland Revenue*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 547**

LANDLORD AND TENANT ACT, 1954: INTENTION TO RECONSTRUCT: "INTENDS"

Fleet Electrics, Ltd. *v.* Jacey Investments, Ltd.

Wills *v.* Same

Lord Evershed, M.R., Hodson and Jenkins, L.JJ. 5th July, 1956

Appeals from Walsall County Court.

The landlord company were the lessees of a block of four shop premises in Park Street, Walsall. They had sub-let two of the shops to an associated company and the other two they had respectively sub-let to the two applicant companies. The leases of all four shops were due to expire in September, 1956. On 7th February, 1955, the board of directors of the landlord company resolved that the Park Street premises should be developed by the conversion of the four into a single store, and that an architect be instructed to prepare plans, and, further, that the existing tenancies should be determined. On 4th October, 1955, the landlords gave notice to the respective applicant companies pursuant to the provisions of the Landlord and Tenant Act, 1954. In those notices the landlords stated that they would oppose an application to the court under Pt. II of that Act for the grant of new tenancies on the ground that on the termination of the existing tenancies they intended to carry out "substantial works of reconstruction." Both tenants applied under s. 26 of the Act to the county court to have new leases granted to them. In December, 1955, the landlords' architect prepared a plan of the proposed works of reconstruction. That plan was submitted to the planning authority, who indicated that there was no objection to it. The consent of the superior landlords to the proposed alterations was given on 20th March, 1956. On 10th May the tenants' applications were heard. At that date the landlords had had no specifications of the proposed works prepared. It appeared from the evidence that the landlords' intention was that the reconstructed store should be let to their associated company. That company, however, had in fact not considered the matter. The county court judge held that the landlords had failed to prove their objection to the grant of a new lease since they had not established that they had a firm and settled intention to carry out the proposed works, and he ordered that a lease for a term of five years should be granted to each tenant.

The landlords appealed both against the grant of new leases and against the length of the terms granted.

LORD EVERSHED, M.R., said that these two appeals arose out of applications for new tenancies under the Landlord and Tenant Act, 1954, to which application the landlords common to both tenants had objected on the specific ground set out in s. 30 (1) (*f*);

that was to say that " on the termination of the current tenancies the landlord intends to demolish or reconstruct the premises comprised in the holding, or a substantial part of those premises . . ." His lordship referred, *inter alia*, to *Cunliffe* v. *Goodman* [1950] 2 K.B. 238; 94 SOL. J. 179, and to *Reohorn* v. *Barry Corporation* [1956] 1 W.L.R. 845; *ante*, p. 509, and said that what the court in cases such as the present had to decide was whether the landlord had established that he had at the requisite dates a firm and settled intention so to reconstruct the premises. It was, of course, clear that when, as in the present case, the landlord was a limited company, the existence of the intention (and particularly the proof of the quality of the intention, that it was firm and settled) could be established only through the directors or other principal officers of the company. His lordship reviewed the evidence and said that it was quite impossible for the Court of Appeal to say that there was no basis in the evidence to support the judge's conclusion, and since the judge's finding was a question of fact the court could not in the above circumstances under the County Courts Act, 1955, disturb that finding. He (his lordship) agreed that, if a landlord had formed a definite intention to reconstruct, it was not necessary that the landlord should have a specific tenant in mind for the reconstructed premises, but the facts that the suggested tenant had not considered the proposals and that no consideration had been given to the cost of the work were relevant facts to be considered in determining whether the landlord had the necessary intention. There remained the subsidiary question whether the court ought to vary the length of the tenancy which in each case the county court judge thought it right to grant, namely, five years. The present cases were not at all like *Reohorn* v. *Barry Corporation*, *supra*, but were cases in which the tenants were themselves desirous of carrying on their respective trades. In his (his lordship's) judgment, s. 33 of the Act made the question of the length of a tenancy granted under the Act one pre-eminently for the discretion of the judge, and there was nothing in the present appeals which would justify the court in altering the length of the term fixed by the county court judge. The appeals would be dismissed.

JENKINS and HODSON, L.JJ., agreed. Appeals dismissed.

APPEARANCES: *R. E. Megarry*, Q.C., *John Montgomerie* (*Beckingsales*, for *Joseph Cohen & Cowen*, Birmingham); *F. W. Beney*, Q.C., and *David J. Stinson* (*Kimbers*); *Heathcote-Williams*, Q.C., and *Paul Layton* (*T. D. Jones & Co.*, for *Douglas Clark, Brookes and Co.*, West Bromwich).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[1 W.L.R. 1027**

Queen's Bench Division

LICENSING: "ROOMS FOR THE ACCOMMODATION OF THE PUBLIC": WHETHER AT LEAST TWO ROOMS MUST BE AVAILABLE FOR CONSUMPTION OF LIQUOR

R. *v.* Middlesex County Confirming and Compensation Committee; Ex parte Frost

Pilcher, Ormerod and Donovan, JJ.

2nd July, 1956

Application for mandamus.

On an application to licensing justices by a local authority for an on-licence in respect of a large house acquired by the authority as a catering establishment, the justices granted the application subject to a condition that intoxicating liquor should be served only in an upstairs restaurant. In addition to the restaurant there were a number of rooms available to the public. On submitting the application to the confirming authority, that authority refused to hear the application on the ground that the house did not contain at least two rooms for the accommodation of the public as required by s. 32 of the Licensing Act, 1953, and that, accordingly, the grant was void by reason of s. 34 of the Act.

ORMEROD, J., said that the contention of the objectors to the grant was that the only room which was available, in view of the conditions imposed by the justices for the sale of intoxicating liquor, was the restaurant upstairs, and that, although the other rooms in the building may have been available for the accommodation of the public, they were not available in the sense required by s. 32 of the Act of 1953, because they were not available for the sale of liquor or consumption of liquor, and that in those circumstances the premises did not qualify within the terms of s. 32. The construction that the applicant asked the court to put on s. 32 was that here were premises which contained, in addition to the rooms occupied by the inmates, at least two rooms for the accommodation of the public, although not necessarily rooms in which liquor was sold; that rooms " for the accommodation of the public " meant what it said, accommodation for the public without qualification, and that as those rooms were available, the premises could not be said to be disqualified. As part of the argument on that basis reference was made to s. 32 (4) and it was contended that railway refreshment rooms, which ordinarily contain one room only for the purpose of selling or consuming liquor, should be on the same footing so far as disqualification was concerned as any other premises in respect of which a licence was sought, because there are other rooms available on a railway station for the accommodation of the public, even although they are not rooms in which intoxicating liquor is sold. He (his lordship) had come to the conclusion that the proper construction of the words " accommodation of the public " in s. 32 was that which was put on those words by the applicant, and in those circumstances, the application for mandamus should be granted.

PILCHER, J., agreed and DONOVAN, J., gave a concurring judgment. Order of mandamus.

APPEARANCES: *Percy Lamb*, Q.C., and *Graham Eyre* (*Sharpe, Pritchard & Co.*, for *Town Clerk*, Willesden Borough Council) *Richard Elwes*, Q.C., and *Sidney Lamb* (*J. E. Lickfold & Sons*); *J. Burge* (*Kenneth Goodacre*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 995**

UNLICENSED DRIVER OF CAR ACCOMPANIED BY INSTRUCTOR: INSTRUCTOR IN CONTROL OF DRIVER AND IN POSITION TO ASSUME CONTROL OF CAR: WHETHER INSTRUCTOR A DRIVER OF CAR

Evans *v.* Walkden and Another

Lord Goddard, C.J., Ormerod and Donovan, JJ.

11th July, 1956

Case stated by Merioneth justices.

A fifteen year old boy, seated in the driver's seat, drove a motor car for about 200 yards along a road in bottom gear at a speed of about four to five miles per hour. His father, a driver of thirty years' experience, was sitting beside him. The father was in a position to control his son's driving, and was in fact doing so, and could have stopped the car immediately at that slow speed; the steering wheel was within his reach, as also were the brake and clutch pedals, the ignition key and the gear handles on the steering wheel. The father was the holder of a motor car insurance policy which covered third-party claims for damage " arising out of or caused by the use of the car," but which did not extend to any loss or damage or liability arising whilst the car was being driven by an unlicensed driver. The son was charged with using, and the father with permitting the use of, the motor car on the road, there not being in force in relation to the user a policy of insurance in relation to third-party risks, contrary to s. 35 of the Road Traffic Act, 1930. The justices considered that having regard to the degree of control exercised by him, the father was a driver of the car at the material time, and they dismissed both informations. The prosecutor appealed.

ORMEROD, J., giving the first judgment, said that the father may well have been in control of his son who was driving, and in a position to assume control of the car and to become at any moment a driver of the car, but he was not in control of the car, nor, on the facts found, could he be regarded, at the time when the car was being driven by the son, as a driver of the car. The justices were influenced by the decision in *Langman* v. *Valentine* [1952] 2 T.L.R. 713; [1952] 2 All E.R. 803, where the owner of the car, sitting beside an unlicensed driver, kept one hand on the hand brake and the other on the steering wheel, and at all material times was able to steer the car, and stop or start it. The court held that the justices were justified in concluding that he was the driver of the car, not necessarily because there could be two drivers, but because in those circumstances, he was the driver. The circumstances in the present case were very different, and that case was distinguishable on the facts. In the present case there was no evidence on which the justices could come to the conclusion that the father was a driver of the car, and it followed that the driver, and the only driver, was the son. As the son

was an unlicensed driver it followed that so far as that user of the car was concerned there was no policy of insurance in force, and the appeal must be allowed.

DONOVAN, J., agreed. He said that control was not the same thing as the possibility of assuming control. *Langman* v. *Valentine, supra,* ought not to be made the starting point for more indulgence.

LORD GODDARD, C.J., agreed. He said that he did not desire to be a party to any extension of *Langman* v. *Valentine*, or any application of the decision in that case to facts which were not strictly in line with it. Appeal allowed.

APPEARANCES: *John Davies* (*Horace Davies & Co.* for *J. Charles Hughes & Co.*, Dolgelley); *A. J. Irvine* (*Amery-Parkes & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 1019**

CRIMINAL LAW: FITNESS TO PLEAD: DISAGREEMENT BY JURY: WHETHER NEW JURY TO BE SWORN

R. *v.* Darkhu

Finnemore, J. 12th July, 1956

Trial on indictment at Birmingham Assizes.

The accused was charged with wounding with intent to murder. Before his plea was taken a jury was sworn to determine whether he was fit to plead, and evidence was given that he was suffering from paranoic schizophrenia. On this issue the jury disagreed and the question arose whether a further jury should be sworn to return a verdict on this issue or whether, the evidence having failed to satisfy the jury of the accused's insanity, the court should proceed to trial of the charge contained in the indictment.

FINNEMORE, J., accepted the submission by counsel for the Crown that the issue whether the accused was fit to plead or to take his trial was an issue upon which a final decision must be made. He discharged the jury and directed that a new one be sworn.

APPEARANCES: *J. E. S. Simon*, Q.C., and *M. Newell* (*M. P. Pugh*, Birmingham); *R. K. Brown* (*Faber & Co.*, Birmingham).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 989**

RATES: RATEABLE OCCUPATION: HUSBAND LEAVES WIFE IN MATRIMONIAL HOME: BENEFICIAL OCCUPATION BY HUSBAND

Cardiff Corporation *v.* Robinson

Lord Goddard, C.J., Ormerod and Donovan, JJ. 12th July, 1956

Case stated by the stipendiary magistrate for the City of Cardiff.

A husband lived with his wife and children in a house owned by his father. In November, 1954, differences having arisen between them, the husband left his wife and went to live elsewhere, agreeing that she should remain in the house rent-free and that he should pay her £6 a week by way of maintenance. He waived any claims to the furniture left in the house and, having paid the rates to the end of the financial year, on 31st March, 1955, notified the rating authority that he was no longer the occupier of the house and that his liability to pay the rates thereon had ceased. The father raised no objection to the wife remaining in the house. On a complaint by the rating authority against the husband for failure to pay the first instalment of the rates for 1955, the magistrate was of opinion that the husband was no longer in beneficial occupation of the hereditament and dismissed the complaint. The rating authority appealed.

LORD GODDARD, C.J., said that the position was that the husband, having left his wife and children, was under an obligation to maintain them and, among other things, to provide a roof over their heads. He had done that by telling the wife that she might continue to occupy the house. It was obvious, therefore, that the husband had made this provision for his wife as part of the obligation he was under to maintain her. Therefore he was using this house which his father had allowed him to occupy in the most beneficial way he could by housing his wife and children in respect of whom he was liable to provide a home. If the husband went out of the house and left his furniture in it, he was liable, so long as his furniture was there, to pay the rates because there was a beneficial occupation. If he chose to leave the house and leave his wife and family there, why was it any different from leaving his furniture there? The only case which had any direct bearing on the present case was *Robinson* v. *Taylor* [1948] 1 K.B. 562, and that case might require consideration in another court. In the present case, there was an agreement which showed that the husband was using the house to maintain his wife and therefore had a beneficial occupation of the house. Accordingly, the case should go back with a direction that a distress warrant must issue.

ORMEROD, J., agreed, and DONOVAN, J., delivered a concurring judgment. Appeal allowed.

APPEARANCES: *Patrick Browne* (*Theodore Goddard & Co.*, for *S. Tapper Jones*, Cardiff); *Michael Evans* (*Fortescue, Adshead and Guest*, for *Richards & Guest*, Cardiff).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 52**

TOWN AND COUNTRY PLANNING: ENFORCEMENT NOTICE SERVED ON OCCUPIER WHILE APPEAL TO MINISTER PENDING: VALIDITY

Davis *v.* Miller

Lord Goddard, C.J., Ormerod and Donovan, JJ.

13th July, 1956

Case stated by Cirencester justices.

On 1st August, 1952, a county council as the local planning authority extended for a further year a consent previously granted to the occupier of certain land in Cirencester under the Town and Country Planning Act, 1932, allowing him to use the site for coach parking and garaging vehicles, subject to the condition that such use was discontinued and the buildings removed by 27th September, 1953. On 14th September, 1952, the occupier appealed to the Minister pursuant to s. 16 of the Town and Country Planning Act, 1947, against the condition imposed, but asked that the consideration of his appeal be postponed pending negotiations with the county council. The negotiations failed, the period allowed by the condition expired, and on 9th November, 1953, the county council served an enforcement notice requiring the occupier to discontinue the user of the land for coach parking and to remove the buildings thereon by a certain date. The occupier then requested the Minister to consider his appeal, and on 20th April, 1954, after a local inquiry, the Minister refused to extend the permission and dismissed the appeal. The occupier continued to use the land for coach parking and failed to comply with an order by the county council to discontinue so doing by 31st December, 1955.

Justices dismissed an information preferred against him in January, 1956, by the local planning officer for continuing to use the land contrary to s. 24 (3) of the Act of 1947, holding that the enforcement notice was invalid as it was served while the appeal to the Minister was still pending. The planning officer appealed.

DONOVAN, J., delivering the first judgment, said that in the ordinary way, and as a matter of practice, one would suppose that planning authorities would wait until an appeal had been disposed of. But this was rather an exceptional case and obviously one which was not contemplated by the statute because the appeal had been outstanding for some two years. Therefore, the case could be differentiated from one where the local planning authority might serve their enforcement notice very soon after the conditions had been decided upon and before any appeal had been heard. But the fact was that there was nothing either in s. 16 of the Act of 1947, which gave the right of appeal to the Minister, or in s. 23 which limited the legal right of the planning authority to serve an enforcement notice pending the hearing of an appeal. Here, where the appeal had been outstanding all this time and had been held up by the action of the respondent himself, at least mainly so, there was certainly no stimulus towards reading into s. 23 of the Act some such words as would postpone the serving of an enforcement notice until the appeal had been heard. If the appellant was asked to justify the enforcement notice, all he had to do was to point to s. 23. The reply of the respondent was that that section was not applicable because an appeal was still outstanding, but there was nothing in s. 23 which postponed the right of the planning authority to serve an enforcement notice until the appeal had been disposed of, and there was nothing in the present case which would induce him (his lordship) to read the implication

into the section that they must do so. For those reasons, the justices came to a wrong conclusion.

LORD GODDARD, C.J., and ORMEROD, J., gave concurring judgments. Appeal allowed.

APPEARANCES: *Frederick Mattar* (*Field, Roscoe & Co.*, for *Guy H. Davis*, Gloucester); *Arthur Mildon* (*Tarry, Sherlock and King*, for *Townsends*, Swindon).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1013**

Probate, Divorce and Admiralty Division

DIVORCE: COSTS: ABSENCE OF DEFINITE EVIDENCE THAT CO-RESPONDENT KNEW RESPONDENT TO BE MARRIED

Lycett-Green *v.* Lycett-Green and Du Puy

Judge Granville-Smith (sitting as a Special Commissioner). 25th June, 1956

Undefended petition for divorce by a husband on the ground of adultery: the co-respondent entered an appearance limited to costs.

Evidence was given on behalf of the petitioner by inquiry agents who had seen the co-respondent and respondent together in various places on the Continent, and at hotels in England, at one of which they had been found together in a bedroom at breakfast-time in circumstances from which the court was able to infer adultery. They had visited expensive restaurants together, and had travelled in Rolls-Royces. The petition was served personally upon the co-respondent by one of the inquiry agents who had entered the hotel bedroom; on his first attempt to serve it the co-respondent recognised him and threatened to assault him; on the second occasion service was effected by the petition being handed to him in a newspaper. On none of these occasions did the co-respondent express surprise that he should be concerned in divorce proceedings; but there was no direct evidence by way of admission or otherwise that he knew the respondent to be a married women. The respondent had been a widow at the time of her marriage to the petitioner, with whom she had ceased to live in 1952. Although represented at the hearing, the co-respondent did not give evidence. The case is reported upon the issue of costs which arose from the absence of direct evidence that the co-respondent knew the respondent to be a married woman. Counsel for the co-respondent submitted that, although the question of costs must always be one for the court's unfettered discretion, the court must have some evidence upon which it can be satisfied either that the co-respondent knew that the respondent was a married woman at the time that he was committing adultery with her, or that he ought to have known. In the present case, there was no evidence upon which the court could find that the co-respondent knew that the respondent was married, or that he had any reasonable grounds for assuming her to be married, and he should not, therefore, be condemned in the costs. Counsel for the petitioner agreed that there was no direct evidence that the co-respondent knew the respondent's status by way of admission or otherwise; but submitted that in such matters it was not essential for the petitioner to establish anything affirmatively, but that the court might in its discretion draw the inference upon the evidence that the co-respondent either knew or ought to have known, or could have found out, that the respondent was a married woman, and make an order for costs accordingly. He relied in argument upon *Smith* v. *Smith and Reed* [1922] P. 1, and *Langrick* v. *Langrick and Funnell* [1920] P. 90.

JUDGE GRANVILLE-SMITH (sitting as a Special Commissioner) said that, although there was a practice of some evidence being given that a co-respondent knew the respondent to be a married woman, he was quite satisfied on the authorities which had been cited to him that the practice was one which was subject to the overriding discretion of the court over costs, the discretion as given by the statute. Sir Henry Duke, P., had said (in *Smith* v. *Smith and Reed*, *supra*) that he thought that it was a very unreasonable practice, and that he could never see the justice of it. Looking at the facts of this case, as a question of common sense, it seemed astonishing in view of the position clearly occupied by the respondent and co-respondent, that a man of the world would not know what the situation was in the small world in which they moved. The co-respondent himself, moreover, had not come to give evidence, but through his counsel had asked the court to assume in his favour that he did not know the respondent's true status. In the circumstances, it would be shutting one's eyes to the way of the world to hold that he had no reason to know. It was quite different where a man met a woman who was going about and behaving somewhat like a prostitute. In those circumstances, a man might come forward and say: "I had no idea what she was"; that was not this case, or anything like it. In those circumstances, it was right to make a finding of adultery against the co-respondent, and to order him to pay the costs. Decree *nisi*, costs against the co-respondent.

APPEARANCES: *Donaldson Loudoun* (*Withers & Co.*); *Colin Sleeman* (*Ashurst, Morris, Crisp & Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 990**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time:—

Aberdeen Harbour Order Confirmation Bill [H.C.] [26th July.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Aberdeen Harbour.

Sanitary Inspectors (Change of Designation) Bill (H.C.) [26th July.

Read Third Time:—

British Transport Commission (No. 2) Bill [H.C.] [24th July.
Chertsey Urban District Council Bill [H.C.] [26th July.
Coal Industry Bill (H.C.) [26th July.
Croydon Corporation Bill [H.C.) [24th July.
Governors' Pensions Bill [H.C.] [26th July.
Leeds Corporation Bill [H.C.] [24th July.
London County Council (General Powers) (No. 2) Bill [H.C.] [24th July.
Manchester Ship Canal Bill [H.C.] [26th July.
Marriage (Scotland) Bill [H.C.] [26th July.
Newcastle upon Tyne Corporation Bill [H.C.] [26th July.
Pier and Harbour Provisional Order (Great Yarmouth Port and Haven) Bill [H.C.] [24th July.
Pier and Harbour Provisional Order (Wisbech Port and Harbour) Bill [H.C.] [24th July.
Public Works Loans Bill [H.C.] [26th July.
Restrictive Trade Practices Bill [H.C.] [26th July.
Road Traffic Bill [H.C.] [23rd July.
Rugby Corporation Bill [H.C.] [26th July.
Underground Works (London) Bill [H.C.] [23rd July.
Valuation and Rating (Scotland) Bill [H.C.] [26th July.

In Committee:—

British Caribbean Federation Bill [H.C.] [23rd July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Consolidated Fund (Appropriation) (No. 2) Bill [H.C.] [26th July.

To apply certain sums out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and fifty-seven, and to appropriate the further supplies granted in this Session of Parliament.

Read Third Time:—

Crown Estate Bill [H.C.] [27th July.
Felixstowe Dock and Railway Bill [H.L.] [27th July.
Middlesex County Council Bill [H.L.] [26th July.
Overseas Resources Development Bill [H.C.] [27th July.
Sexual Offences Bill [H.L.] [27th July.

B. QUESTIONS

ENEMY ALIENS (PROPERTY)

Mr. DEREK WALKER-SMITH made the following statement as to the general grounds, under the regulations, on which enemy aliens were allowed to retain their property or were liable to have it confiscated: "No control by the Custodian of Enemy Property or the Board of Trade was exercised over the property of enemy aliens (that is, German enemy subjects resident in this country during the war) in cases where the owner was not the subject of special restrictive measures, or internment, by the authorities. In some cases, where the owner was interned, his property was vested at an early date by the Board in the Custodian to prevent any possible advantage to the enemy. After hostilities ceased, the property of interned aliens who were allowed to remain in the United Kingdom was restored to them. About 1,200 were, however, repatriated to Germany and their property then became subject to control to the same extent as the property of all those German nationals who had been resident in Germany during the war. If, however, a repatriated German reached Germany after the 11th March, 1946, and also had not been in internment after the 8th November, 1945, his property was exempted by a Statutory Rule and Order (No. 331 of 1946, dated the 11th March, 1946) from the general provisions. In a very small number of cases a released internee who was to be sent back to Germany could not be repatriated, but was ordered to leave the United Kingdom. In such a case the vested property is being treated in the same way as that of the repatriated internees who were outside the exemption I have mentioned, or as that of a German always resident in Germany. All such property is German Enemy Property available for the purposes of the Distribution of German Enemy Property Act, 1949."

[24th July.

PREMIUM SAVINGS BONDS (ESTATE DUTY)

Mr. MACMILLAN stated that no estate duty will be levied on prize money paid on a Premium Bond which has been the subject of a gift within five years of the death of the donor and where the prize money was gained subsequent to the date of the gift.

[27th July.

STATUTORY INSTRUMENTS

Act of Sederunt (Alteration of Sheriff Court Fees), 1956. (S.I. 1956 No. 1083 (S.50).)

Agricultural Statistics (England and Wales) Amendment Regulations, 1956. (S.I. 1956 No. 1102.) 5d.

Bodmin Water Order, 1956. (S.I. 1956 No. 1103.) 6d.

Brecon (Amendment of Local Enactment) Order, 1956. (S.I. 1956 No. 1107.)

Calves (Feeding in Transit) Order, 1956. (S.I. 1956 No. 1127.) 5d.

Cinematograph Films (Exhibitors) (Amendment) Regulations, 1956. (S.I. 1956 No. 1101.)

Fur Wages Council (Great Britain) Wages Regulation Order, 1956. (S.I. 1956 No. 1099.) 11d.

Import Duties (Exemptions) (No. 8) Order, 1956. (S.I. 1956 No. 1097.) 5d.

London Traffic (Prescribed Routes) (St. Marylebone) (Amendment) Regulations, 1956. (S.I. 1956 No. 1100.) 5d.

London Traffic (Prohibition of Waiting) (Seal) Regulations, 1956. (S.I. 1956 No. 1120.) 5d.

Milk Distributive Wages Council (England and Wales) Wages Regulation (No. 2) Order, 1956. (S.I. 1956 No. 1117.) 8d.

National Gallery (Lending outside the United Kingdom) (No. 2) Order, 1956. (S.I. 1956 No. 1096.)

Penrith-Middlesbrough Trunk Road (Augill Bridge, near Brough, Diversion) Order, 1956. (S.I. 1956 No. 1109.) 5d.

Savings Certificates (Amendment) (No. 2) Regulations, 1956. (S.I. 1956 No. 1136.) 5d.

Stopping up of Highways (Bournemouth) (No. 1) Order, 1956. (S.I. 1956 No. 1089.) 5d.

Stopping up of Highways (Bradford) (No. 3) Order, 1956. (S.I. 1956 No. 1110.) 5d.

Stopping up of Highways (Bristol) (No. 7) Order, 1956. (S.I. 1956 No. 1090.) 5d.

Stopping up of Highways (Cheshire) (No. 5) Order, 1956. (S.I. 1956 No. 1115.) 5d.

Stopping up of Highways (Essex) (No. 19) Order, 1956. (S.I. 1956 No. 1086.) 5d.

Stopping up of Highways (Essex) (No. 20) Order, 1956. (S.I. 1956 No. 1087.) 5d.

Stopping up of Highways (Essex) (No. 23) Order, 1956. (S.I. 1956 No. 1088.) 5d.

Stopping up of Highways (Gloucestershire) (No. 14) Order, 1956. (S.I. 1956 No. 1111.) 5d.

Stopping up of Highways (Hertfordshire) (No. 8) Order, 1956. (S.I. 1956 No. 1085.) 5d.

Stopping up of Highways (London) (No. 25) Order, 1956. (S.I. 1956 No. 1106.) 5d.

Stopping up of Highways (North Riding of Yorkshire) (No. 1) Order, 1956. (S.I. 1956 No. 1108.) 5d.

Stopping up of Highways (Staffordshire) (No. 6) Order, 1956. (S.I. 1956 No. 1112.) 5d.

Stopping up of Highways (West Riding of Yorkshire) (No. 17) Order, 1956. (S.I. 1956 No. 1119.) 5d.

White Fish Subsidy (Aggregate Amount of Grants) Order, 1956. (S.I. 1956 No. 1114.) 5d.

Winchester-Preston Trunk Road (Lodge Hill, North of Abingdon, Diversion) Order, 1956. (S.I. 1956 No. 1084.) 5d.

Workmen's Compensation and Benefit (Supplementation) Act, 1956 (Commencement) Order, 1956. (S.I. 1956 No. 1128 (C.8).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

PRACTICE DIRECTION

APPEALS BY WAY OF CASE STATED, ORDER 58A

In cases in which a written decision has been given by a tribunal, containing all necessary findings of fact and indicating the question or questions of law to be decided by the Court of Appeal, a short and formal case agreed by the parties, with a signed copy of the decision of the tribunal annexed, will be accepted in place of a case stated in the usual form.

This procedure should be adopted wherever practicable, as tending to save both time and expense.

EVERSHED, M.R.

27 vii. 56.

Wills and Bequests

Mr. Joseph Sutcliffe Rayner, solicitor, of Chellow Dene, near Bradford, left £11,977.

OBITUARY

MR. W. KENYON

Mr. Wilson Kenyon, town clerk and clerk of the peace of Poole, Dorset, died recently, aged 61. He was admitted in 1920.

MR. W. WOODWARD

Mr. William Woodward, retired first town clerk of Bexley, Kent, died on 19th July at Brighton. He was admitted in 1925.

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